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OFFICE OF THE CLERK

No. 1

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT E. BROWN,

Petitioner,

v.

CITY OF WILMINGTON, JIM SILLS, MAYOR;
DELDOT;
CITY COUNCIL FOR THE CITY OF WILMINGTON;
CITY PLANNING DEPT;
MBNA BANK OF AMERICA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ROBERT E. BROWN
1024 Walnut Street
Wilmington Delaware 19801
(302) 652-9959

QUESTIONS PRESENTED

1. Did United States District Judge Roderick R. McKelvie violate Canon 1, 2, C, 3 (a), (b), and (c) of Judicial Conduct?

2. Did Judge McKelvie violate 28 USC 144, and 28 USC 455, (a), (b), (1), (2), (3), by presiding over the case of Starks v. MBNA Bank of America, and the Robert E. Brown, and Micro Business Community, vs. City of Wilmington, Jim Sills, Mayor, DELDOT; City Council for the City of Wilmington, City Planning, and MBNA Bank of America, at the same time create a conflict of interest, Prejudice, partiality, bias, or bent?

3. Did the violation of Canon 3, (a), (b), of Judicial Conduct by Judge McKelvie deny Robert E. Brown, and Micro Business Community their 5th and 14th Amendment rights of "Due Process and Equal Protection, and Rights of Liberty, under the law, provided to them by the United States Constitution?

LIST OF PARTIES

PETITIONERS - Robert E. Brown and Micro Business Community (Knotty Pine Restaurant i.e. Cliff and Stella Dunning, Viola's Beauty Salon i.e. Viola Dillard, Phalanges Beauty Salon i.e. Sandra Smithers, Walnut Street Deli i.e. Robert E. and Shirley H. Brown).

RESPONDENTS - City of Wilmington; Jim Sills; Mayor; DELDOT; City Council for the City of Wilmington; City Planning; MBNA Bank of America.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	7
PROOF OF SERVICE	8
APPENDIX	1a-39a
A. United States Court of Appeals for 3rd Circuit Judgement - August 2nd 2001	1a-2a
B. United States District Court for the District of Delaware - Order - June 30, 2000	3a-8a
C. 144 Bias or Prejudice of judge	9a
D. 455 Disqualification of justice, judge, or magistrate	10a-13a
E. 42 USC 1983 - Civil action for deprivation of rights	14a-15a
F. 42 USC 1985 - Conspiracy to interfere with civil rights	16a-17a
G. Canon 3, Performing the Duties of Judicial Office Impartially and diligently	18a

		PAGE
G2.	**Canon 2, Avoiding Impropriety and the Appearance of Impropriety In All of the Judge's Activities**	18a
G1.	**Canon 1, Upholding the integrity and Independence of the Judiciary**	20a
H.	**5th Amendment - U.S. Constitution**	21a-22a
I.	**14th Amendment - U.S. Constitution**	23a-24a
J.	**Postal Receipt**	25a
J1.	**Summons To Mayor J. Sills**	26a-27a
K.	**Postal Receipt**	28a
K1.	**Summons To C. Cawley**	29a-30a
L.	**Third Circuit Court Opinion**	31a
L1.	**Mandamus**	31a-32a
M.	**Opinion of the Circuit Court**	33a-37a
N.	**Order Denying Rehearing**	38a-39a

TABLE OF AUTHORITIES

PAGE

Citations:

Likey v. United States, 510 U.S. 540, (1994) 6

Bernofsky et. al. v. Tulane University, 962 F. Supp. 895 (ED. LA. 1997), United States Supreme Court 6

Statutes:

28 USC 144, Prejudice or Bias of Judge ..... i, 2, 5, 6, 7

28 USC 455, Disqualification of Justice, Judge, or Magistrate ..... i, 2, 5, 6, 7

28 USC 1254(1) Jurisdiction 2

42 USC 1983, Civil Action for deprivation of rights 2, 7

42 USC 1985, Conspiracy to interfere with civil rights 2, 7

Rules:

Supreme Court Rule 10 (a), (b), (c) 6

Canons of Judicial Conduct;

Canon 1, ... i, 2, 5, 6, 7, 19a, 20a

Canon 2, ... i, 2, 6, 18a, 19a

Canon 3, ... i, 2, 18a, 19a

UNITED STATES CONSTITUTIONAL AMENDMENT RIGHTS:

5th Amendment, ... i, 3, 7, 4a, 6a, 21a

14th Amendment, ... i, 3, 7, 4a, 6a, 23a

No.

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT E. BROWN,

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v.

CITY OF WILMINGTON, JIM SILLS, MAYOR;
DELDOT;
CITY COUNCIL FOR THE CITY OF WILMINGTON;
CITY PLANNING DEPT;
MBNA BANK OF AMERICA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW

[X] For cases from federal courts:
The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

[X] The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

[X] The opinion of the United States Third Circuit Court of Appeals of the Writ of Mandamus appears at Appendix L, L1, and is unpublished.

JURISDICTION

[X] For cases from federal courts:
The date on which the United States Court of Appeals decided my case was August 2, 2001.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 31, 2001, and a copy of the order denying rehearing appears at Appendix B

The Jurisdiction of this Court is invoked under 28 USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATUTE

1. 28 USC 144, BIAS OR PREJUDICE OF JUDGE - Appendix - C
2. 28 USC 455, DISQUALIFICATION OF JUSTICE, JUDGE, OR MAGISTRATE - Appendix - D
3. 42 USC 1983, Civil action for deprivation of rights. Appendix - E
4. 42 USC 1985, Conspiracy to interfere with civil rights. Appendix F
5. 28 USC 1254,(1). Jurisdiction 2.

RULES

1. CANON 3, Performing the duties of judicial office impartially and diligently Appendix - G
2. CANON 2, Avoiding impropriety and the appearance of Impropriety in all of the Judges activities. - Appendix - G2
3. CANON 1, Upholding the integrity and independence of the judiciary - Appendix - G1

CONSTITUTION OF THE UNITED STATES

5th AMENDMENT - Due Process and Equal Protection under the Law. - Appendix - H

14th AMENDMENT - Due Process and Equal Protection under the Law - Appendix I

STATEMENT OF THE CASE

1. This case derives out of former Mayor Jim Sills administration, the first Afro- American Mayor of the City of Wilmington, Delaware, who served two terms, from the years of 1992 to the year 2000. Mayor Jim Sills's administration and State Representatives developed a project to create jobs in the downtown Business district of the City of Wilmington amongst the Micro Business Community. A complete City block was offered to MBNA Bank of North America, along with tax abatements for five years, as an incentive to locate its international headquarters in the City of Wilmington, and MBNA Bank of America accepted.

2. During the period of the Sills administration MBNA Bank went on a buying spree. It bought businesses, and residential properties at an alarming rate. As a result of locating their international headquarters in center City of Wilmington, their project spread to include the tearing down of businesses and residential properties within the downtown business district and building five more buildings and parking facilities each encompassing a complete City block. These buildings bordered the Micro Business Community who complained of the inconvenience, encroachment and the lack of notification by the Sills administration. The taking of public Streets, and public parking, requires notification according to the rules of Wilmington City Charter, State laws, and City Ordinance. Notification is required by registered mail to landowners whose properties are affected by the changing or taking. In

addition, the required impact studies were not performed, nor any compensation made for the affected landowners according to law. These facts were revealed to the Micro Business Community by State Representative Arthor Scott, and Senator Bob Marshall of Delaware, from whom the Micro Business Community sought relief from their dilemma without success.

3. During the period of the MBNA Bank project development members of the Micro Business Community met with MBNA Bank, and State Representatives to address their issues and expressed their concerns and problems resulting from the project. There was no resolution to the issues of relief of the inconvenience and encroachment.

4. The Micro Business Community hired an Attorney, Mr. Edward Morris, who assured the Micro Businesses that their issues were well founded in law. The Attorney contacted MBNA Bank, three or four times and for some unknown reason backed out of his promise to sue on the Micro Business Communities behalf.

5. Robert E. Brown spokes person for the Micro Business Community, the owner and operator of the Walnut St. Deli, along with his wife Shirley H. Brown, filed suit on behalf of the Micro Business Community. On August 13, 1999, Robert E. Brown served notice on Mayor Jim Sills, Chief Executive of the City of Wilmington, by certified mail return receipt, (SEE: Appendices J, J1, J2). On August 13, 1999, service was made on Charles Cawley, CEO. of MBNA Bank, by certified mail return receipt requested. (SEE: Appendix K, K1, K2).

6. Charles Oberley, Attorney for MBNA Bank, and former two term State Attorney General who was representing MBNA in another case, captioned Sparks v. MBNA Bank, allowed the Clerk of the United States District Court to assign the Robert E. Brown and Micro

Business Community v. City of Wilmington, Mayor Jim Sills, City Council, DELDOT, City Planning, and MBNA Bank case to Judge Roderick R. McKelvie, who was the same Judge presiding over the Starks v. MBNA Bank Case. This action means Judge McKelvie was presiding over two cases involving Respondent MBNA Bank at the same time. This appears to have been a conflict of interest.

7. Judge McKelvie dismissed the Robert E. Brown and Micro Business Community v. City of Wilmington, Mayor Jim Sills, City Council, DELDOT, City Planning Dept. and MBNA Bank case for ineffective service of Process, and Brown and Micro Business Community Appealed to the Third Circuit Court of Appeals.

8. During this time Robert E. Brown and Micro Business Community were made aware of the fact that Judge McKelvies' presiding over the two cases at the same time were violations of Canon 1, 2, 3(a), (b), 1, 2, 28 USC 144, and 28 USC 455 (a), (b). Brown filed a Writ of Mandamus in the Third Circuit Court of Appeal, raising the issue of recusation on behalf of Judge McKelvie. The Mandamus was denied because an Appellate process was available to Brown at the time. (SEE: Appendix L, L1).

9. In the matter on Appeal to the Third Circuit Court of Appeals; Brown, and the Attorneys for Defendants, Charles Oberley attorney for MBNA Bank and Ms. Paulette S. Moore, attorney for Mayor Sills and City Defendants were placed under court order Briefing schedule. Brown and Oberley submitted briefs and Ms. Paulette S. Moore failed to file a brief on behalf of the Mayor and City Defendants.

10. Third Circuit Court of Appeals affirmed the District Court decision, and Brown filed for rehearing enbanc, which was denied without reason. The Third Circuit Court of Appeals did not address the matter of recusa-

tion, and Brown files a Writ of Certiorari to the United State Supreme Court.

REASONS FOR GRANTING THE WRIT

The reasons for granting a writ of Certiorari is because the appeals court decision conflicts with the Supreme Court decision in *Likey v. United States*, 510 U.S. 540, (1994) and *Bernofsky v. Tulane University*, 962 F.Supp. 895(E.D. LA. 1997). These two case decisions have set the criterion, profile and remedy for cases wherein conflicts exist. (SEE: Supreme Court Rule 10 (a), (b), (c)).

1. Judge Roderick R. McKelvie, presiding over cases involving Respondents MBNA Bank in two different cases at the same time draws in to question the standard set by Canon 1, of Judicial Conduct, and the Integrity of the Judicial system. His actions draw in to question Canon 2, the Appearance of impropriety, and thirdly his long term relationship with the Charles Oberley, former Attorney General of the State of Delaware and Attorney for MBNA Bank, clearly gives the appearance of a bent, prejudice, bias, and partiality.

2. The United States Supreme Court cases cited has established in 28 USC 144, that the bias or prejudice of a judge under minds the fundamental principle of a fair trial, and 28 USC 455(a), (b), 1, 2, revisions established in *Likey v. United States* 510 U.S. 540, (1994), places the obligation squarely on the Judge to disqualify himself where such conflicts exists.

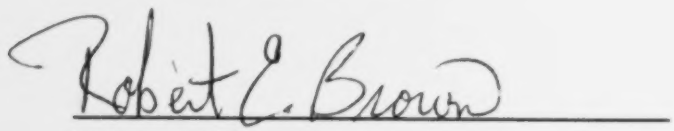
3. This case should be heard by United States Supreme Court in the interest of every citizen of the United States of America, because the lower court decisions under mind the confidence and public trust in the United States Constitution, and what it stands for.

4. This case should be heard by United States Supreme Court in the interest of the citizens of the United States, their rights established by 42 USC 1983 Civil Rights Acts, and 42 USC 1985, Conspiracy to interfere with Civil Rights, that no citizen should be deprived of rights secured by the guarantees of the 5th Amendment, that no citizen; "Be deprived of life, liberty, or property without due process of the law; nor shall private property be taken for public use, without just compensation." The 14th Amendment lends its support, in Section 1; "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

CONCLUSION

It is for these reasons we feel that the petition for a writ of certiorari should be granted.

Respectfully Submitted,



Robert E. Brown
1024 Walnut Street
Wilmington Delaware 19801
(302) 652-9959

Date: January 23, 2002

---

[1]Should this Court decide not to hear this case at this time, we respectfully request remanding this case back to the Third Circuit Court of Appeals to be decided on the issues involving Judge R.R. McKelvie's violations of canon 1, 2, 3, 28 USC 144, and 28 USC 455 (a), (b), 1, 2, 3.

PROOF OF SERVICE

I, Robert E. Brown, do swear or declare that on this date, January 15, 2002, as required by Supreme Court Rule 29 I have served this PETITION FOR A WRIT OF CERTIORARI on each party to the Above proceeding an envelope containing the above documents in The United States mail, and hand delivered properly addressed to each of them and with First-class postage prepaid.

The names of those served are as follows:

Oberly & Jennings
Ms. Kathleen M. Jennings
800 Delaware Avenue, Suite 901
Wilmington, Delaware 19801
(302) 576-2000
Attorney for Respondents MBNA Bank

Ms. Cathy A. Jenkins
City of Wilmington
City Solicitor's Office
City/County Building, 9th Floor
800 French Street
Wilmington, Delaware 19801
(302) 571-4000

Robert E. Brown

Robert E. Brown, Pro Se
1024 Walnut Street
Wilmington, Delaware 19801
(302) 652-9959

s/ Joan D. Joseph
Notary Public

January 23, 2002

JOAN D. JOSEPH
NOTARY PUBLIC OF DELAWARE
My Commission Expires July 2, 2003

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE THIRD COURT

No. 00-2124

ROBERT BROWN; - *Appellant*

v.

CITY OF WILMINGTON; JIM SILLS, MAYOR; DELDOT; CITY COUNCIL FOR THE CITY OF WILMINGTON; CITY PLANNING DEPT; MBNA BANK - *Defendant*

---

*Dismissed per Clerk's Order of 8/31/00

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00527)
District Judge: Honorable Roderick R. McKelvie

Submitted Under Third Circuit LAR 34.1(a)
August 1, 2001

BEFORE: NYGAARD, MCKEE and GREENBERG, circuit judges

JUDGMENT

This cause came to be heard on the record from the United States District Court for the District of Delaware. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on June 30, 2000, be, and the same is, hereby affirmed.

Costs taxed against Appellant. All of the above in accordance with the Opinion of the Court.

ATTEST:
s/ Marcia M. Waldron
Clerk:

DATED: August 2, 2001

Certified as true copy and issued in lieu of a formal mandate on November 8, 2001

Teste: s/ Marcia M. Waldron
Clerk, United States Court of
Appeals for the Third Court

APPENDIX B

RECEIVED
JUL 03 2000
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

Civil Action No. 99-527-RRM

ROBERT E. BROWN, ET. AL.,
AND MICRO BUSINESS COMMUNITY- - - - *Plaintiffs*

v.

CITY OF WILMINGTON, MAYOR JIM SILLS,
DELDOT, AND CITY COUNCIL, CITY PLANNING
DEPT., AND MBNA BANK - - - - - - - - - - - *Defendants*

ORDER GRANTING MOTIONS TO DISMISS

This is a civil rights case. Plaintiff Robert E. Brown is a Delaware citizen. Plaintiff Micro Business Community is an organization of Wilmington residents and business owners. Brown is suing on behalf of himself and other members of Micro Business Community. Defendant City of Wilmington is a political subdivision of the State of Delaware. Defendant Jim Sills is the Mayor of the City of Wilmington. Defendants City Council and City Planning Department are governmental bodies of the City of Wilmington (collectively with Sills, "the City"). Defendant Delaware Department of Transportation ("DELDOT") is an agency of the State of Delaware. Defendants MBNA Bank is a Delaware corporation with its principal place of business in Wilmington, Delaware.

On August 13, 1999, plaintiffs filed a complaint in this court pursuant to 28 U.S.C. § 1343, and 42 U.S.C. § 1983, 1985, and 2000a. Plaintiffs allege that defendants, alone or through a conspiracy, repealed a municipal ordinance on

July 8, 1993, which resulted in the elimination of metered parking on several blocks near the intersection of 11th and Walnut Streets in downtown Wilmington ("Downtown Business District"). Plaintiffs contend that defendants arbitrarily and capriciously disregarded plaintiffs' rights guaranteed by the Fifth and Fourteenth Amendments of the U.S. Constitution. On August 31, 1999, plaintiffs amended the complaint, asserting that defendants violated plaintiffs' constitutional rights by failing to give notice of the change in the City's parking ordinances.

On September 3, 1999, the City moved to dismiss the complaint, arguing that the complaint is barred by the statute of limitations, that the complaint fails to state a claim upon which relief may be granted, and that plaintiffs failed to properly serve the complaint.

On September 7, 1999, MBNA moved to dismiss on the same grounds identified by the City. On September 9, 1999, Brown moved for a default judgment against DELDOT.

This is the court's decision on the pending motions.

I. FACTUAL AND PROCEDURAL BACKGROUND

Prior to 1993, MBNA began planning the construction of its world headquarters in the Downtown Business District. On July 8, 1993, the City enacted Ordinance No. 9711, which deleted Ordinance No. 91-072 entitled "Regulations, parking meters in downtown business district." Plaintiffs allege that deleting Ordinance No. 91-072 negatively affected the parking available in the Downtown Business District.

On October 6, 1998, Brown attended a meeting at the local YMCA held by State Senator Bob Marshall and State Representative Arthur Scott to discuss the parking situation. Brown alleges that he first learned of the change in the City's parking ordinances at this meeting. Brown contends that the legislators stated that defendants had not

done a financial impact study, and had provided no notice to plaintiffs as required by 17 Del. C. 1304(e).[1]

On August 13, 1999, Brown filed the complaint in this court. On the same day, he served summons upon defendants through certified mail. The summons to DELDOT is addressed to "City of Wilmington Department of Transportation. (DelDot)."

On December 14, 1999, the Department of Justice of the State of Delaware filed with the court a copy of a letter addressed to Brown dated December 10, 1999, stating that DELDOT was not properly served with process, and that "[u]nless and until you follow the rules and properly serve my client, we will take no action in this matter."

II. DISCUSSION

A. Did Brown Ineffectively Serve Process upon DELDOT?

Rule 4(j) of the Federal Rules of Civil Procedure provides that service upon state or local governments "shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon such defendant." Rule 4(f)(IV) of the Delaware Superior Court Civil Rules provides that service upon a municipal corporation or other governmental organization shall be effected "by delivering a copy of the

---

[1] 17 Del. Co. § 1304 provides, in pertinent part:

Vacation and abandonment hearing.
(a) In all proceedings in Superior Court, after all interested parties have received notice in accordance with this chapter [entitled "Vacating Public Roads and Bridges"], a hearing shall be held in Superior Court, at which time each party before the court, including the Department, the county in which the right-of-way is located, all abutting land owners or all interested parties, may present relevant evidence regarding the necessity or advisability of the continued use of the road, bridge, or right-of-way for the benefit of the general public or interested parties.

summons, complaint and affidavit, if any, to the chief executive officer thereof or by serving copies thereof in the manner prescribed by law for the service of summons upon such defendant."

Plaintiffs sent DELDOT's summons by certified mail to the "City of Wilmington Department of Transportation (DelDot)." Plaintiffs failed to deliver the summons to a "chief executive officer," such as the Secretary of Transportation or the Attorney General. The court finds that plaintiffs ineffectively served process upon DELDOT, and that the court lacks jurisdiction over DELDOT in light of this deficiency. The court will deny plaintiffs' motion for a default judgment against DELDOT, and will dismiss without prejudice plaintiffs' claims against DELDOT. Plaintiffs may elect to re-serve process upon DELDOT in the manner prescribed by Rule 4(f)(IV) of the Delaware Superior Court Civil Rules.

B. Have Plaintiffs Failed to State a Claim for Relief?

To state a claim under 42 U.S.C. §§ 1983 and 1985, plaintiffs must allege a denial of their constitutional rights. Plaintiffs contend that the elimination of metered parking in the Downtown Business District constitutes a violation of their constitutional rights under the Fifth and Fourteenth Amendments. The Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." The Fourteenth Amendment's due process has been interpreted to impose on the states the same obligations imposed by the Fifth Amendment. *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

The streets in the Downtown Business District, and the parking meters thereon, are public property. The complaint does not aver any basis to support a finding that plaintiffs have a private property right in the public roadways and parking facilities of the Downtown Business District. The court finds that the complaint fails to state a claim of an improper taking as would be protected by the Fifth and Fourteenth Amendments.

Plaintiffs contend that they had a right to receive notice of the elimination of the parking facilities, pursuant to 17 Del. C § 1304. Section 1304 deals with "Vacating Public Roads and Bridges." Plaintiffs do not aver that a public road was vacated or abandoned. The court finds that 17 Del. C. § 1304 does not require defendants to notify plaintiffs about changes in parking facilities.

Plaintiffs contend, moreover, that defendants violated 42 U.S.C. § 2000a when the downtown parking was eliminated. Section 2000a provides that "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin." The court finds that nowhere in the complaint do plaintiffs allege that they were denied access to public accommodations on the basis of race, color, religion, or national origin. Thus, plaintiffs fail to state a claim under 42 U.S.C. § 2000a.

III. CONCLUSION

For the reasons discussed above,

IT IS HEREBY ORDERED that:

1. Motion by the City to Dismiss (Docket Item 10) is granted.
2. Motion by MBNA to Dismiss (Docket Item 12) is granted.
3. The complaint is dismissed without prejudice as to DELDOT for ineffective service of process.

s/ Roderick R. McKelvie
United States District Judge

June 30, 2000

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2124

BROWN, ET AL.- *Appellant*

v.

WILMINGTON, ET AL. - - - - - - - - - - - - - - - *Defendant*

Robert E. Brown, Appellant
(Delaware District Civil No. 99-cv-00527)

ORDER

Pursuant to Rule 3(a) of the Federal Rules of Appellate Procedure and Third Circuit LAR Misc. 107.2.

It is ORDERED that the above-entitled case is hereby dismissed for failure to timely prosecute only as to Micro Business Community. The case will continue as to the appellant, Robert E. Brown.

For the Court,
s/ Marcia M. Waldron
Clerk

Date: August 31, 2000

cc: Robert E. Brown
Micro Business Community
Paulette S. Moore, Esq.
Charles M. Oberly, III, Esq.
Seth J. Reidenberg, Esq.

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Citation Found Document Rank 1 of 1 Database
28 USCA S 144 USCA
28 U.S.C.A. § 144

APPENDIX C
UNITED STATES CODE ANNOTATED
TITLE 28.
JUDICIARY AND JUDICIAL PROCEDURE
PART I--ORGANIZATION OF COURTS
CHAPTER 5--DISTRICT COURTS

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Current through P.L. 106-274, approved 9-22-2000

§ 144. Bias or prejudice of judge

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

CREDIT(S)
1993 Main Volume

(June 25, 1948, c. 946, 62 Stat. 898;
May 24, 1949, c. 139, § 65, 63 Stat. 99.)

< General Materials (GM) - References,
Annotations, or Tables >

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Citation Found Document Rank 1 of 1 Database
28 USCA S 455 USCA
28 U.S.C.A. § 455

APPENDIX D
UNITED STATES CODE ANNOTATED
TITLE 28.
JUDICIARY AND JUDICIAL PROCEDURE
PART I--ORGANIZATION OF COURTS
CHAPTER 21--GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

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Current through P.L. 106-274, approved 9-22-2000

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controver-

sy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interest, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purpose of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

CREDIT(S)

1993 Main Volume

(June 25, 1948, c. 646, 62 Stat. 908; Dec. 5, 1974, Pub.L. 93-512 § 1, 88 Stat. 1609; Nov. 6, 1978, Pub.L. 95-598, Title II, § 214 (a), (b), 92 Stat. 2661; Nov. 19, 1988, Pub.L. 100-702, Title X, § 1007, 102 Stat. 4667)

<General Materials (GM) - References, Annotations, or Tables>

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Citation Found Document Rank 1 of 1 Database
42 USCA S 1983 USCA
42 U.S.C.A. § 1983

APPENDIX E
UNITED STATES CODE ANNOTATED
TITLE 42. PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER I--GENERALLY

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Current through P.L. 106-274, approved 9-22-2000

§ 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)
1994 Main Volume

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

2000 Electronic Update

(As amended Pub.L. 104-317, Title III § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

<General Materials (GM) - References, Annotations, or Tables>

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Citation Found Document Rank 1 of 1 Database
42 USCA S 1985 USCA
42 U.S.C.A. § 1985

APPENDIX F
UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER I--GENERALLY

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Current through P.L. 106-274, approved 9-22-2000
§ 1985. Conspiracy to interfere with civil rights
(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment

lawfully assented to by him, or of his being or having being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

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APPENDIX G

CANON 2

Avoiding Impropriety and the Appearance of Impropriety In All of the Judge's Activities

A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

CANON 3

Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

(2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

CODE OF JUDICIAL CONDUCT

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary.

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.

Canon 3. A Judge Should Perform the Duties of Office Impartially and Diligently.

Canon 4. A Judge May Conduct the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations.

Canon 5. A Judge Should Refrain From Inappropriate Political Activity.

Canon 6. A Judge Shall Comply with the Code of Judicial Conduct.

Canon 7. Effective Date of Compliance.

Canon 8. Construction and Terminology of the Code.

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

CANON 1
Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

APPENDIX H

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

APPENDIX I

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

- Next Amendment--Previous Amendment
- Table of Articles and Amendments
- Overview of Full Constitution

APPENDIX J

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
City of Wilmington,
Mayor Jim Sills
800 French St
9th Floor.
Wilmington, De. 19801

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of
C. Signature
X
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

A- 3of 3

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merch
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
Z 355 602 258

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-

Z 355 602 258

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	City of Wilmington
Street & Number	800 French St
Post Office, State, & ZIP Code	Wilmington De. 19801
Postage	$ 1.21
Certified Fee	1.10
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 3.86
Postmark or Date	

PS Form 3800, April 1995

BEST AVAILABLE COPY

APPENDIX J1
UNITED STATES DISTRICT COURT
SUMMONS IN A CIVIL CASE

No. 99-527

ROBERT E. BROWN, ET. AL;
AND
MICRO BUSINESS COMMUNITY - - - - - - - - *Plaintiffs*

v.

CITY OF WILMINGTON, MAYOR JIM SILLS
AND DELDOT, AND CITY COUNCIL, AND
CITY PLANNING DEPT. AND
MBNA BANK - *Defendants*

TO: (Name and address of defendant)
City of Wilmington
Mayor, Jim Sills
800 French Street
City County Building 9th Floor
Wilmington, Delaware 19801
(302) 571-4100

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Robert E. Brown
1024 Walnut Street
Wilmington, Delaware 19801
(302) 652-9959

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon

you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must file your answer with the Clerk of this Court within a reasonable period of time after service.

s/ Peter T. Palleo — Aug. 13, 1999
Clerk — Date

s/ -B Elluhaus
(BY) Deputy Clerk

APPENDIX K

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MBNA Bank
Mr. Charles Cawley, CEO
1100 King St
Wilmington #1 19884
Wilmington, De. [redacted]

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Pls

C – 3 of 3

C. Signature

X

☐ Agent
☐ Addre

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchar
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
Z 355 602 262

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1

FILED
AUG 17 2 15 PM '99
CLERK, U.S. DISTRICT COURT
DISTRICT OF DELAWARE

Z 355 602 262

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to MBNA Bank	
Street & Number 1100 King St.	
Post Office, State, & ZIP Code Wilmington, De. 19801	
Postage	$ 1.43
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 4.08
Postmark or Date	AUG 13 CT

PS Form 3800, April 1995

WILMINGTON DE 19801 AUG

APPENDIX K1
UNITED STATES DISTRICT COURT
SUMMONS IN A CIVIL CASE

No. 99-527

ROBERT E. BROWN, ET. AL;
AND
MICRO BUSINESS COMMUNITY- - - - - - - - *Plaintiffs*

v.

CITY OF WILMINGTON, MAYOR JIM SILLS
AND DELDOT, AND CITY COUNCIL, AND
CITY PLANNING DEPT. AND
MBNA BANK- *Defendants*

TO: (Name and address of defendant)
MBNA Bank
Charles Cawley, C.E.O.
1100 King Street
Wilmington # 1
Wilmington, Delaware 19801
(302) 453-9930

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Robert E. Brown
1024 Walnut Street
Wilmington, Delaware 19801
(302) 652-9959

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon

you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must file your answer with the Clerk of this Court within a reasonable period of time after service.

s/	Peter T. Palleo Clerk	Aug. 13, 1999 Date
s/	B Elluhaus (BY) Deputy Clerk	

APPENDIX L

HPS-91 UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1041

IN RE: ROBERT E. BROWN- - - - - - - - - - - - - - *Petitioner*

On Petition for a Writ of Mandamus

(Related to D.Del. Civ. No. 99-cv-00527)
February 26, 2001

OPINION
(Filed March 1, 2001)

Before: CHIEF JUDGE BECKER, WEIS and GARTH, Circuit Judges

PER CURIAM. On January 5, 2001, Robert Brown filed the instant petition for a writ of mandamus. Brown requests: that this Court certify *Brown* v. *City of Wilmington, et al.*, D.Del. Civ. No 99-cv-00527, as a class action; that District Court Judge Roderick R. McKelvie be recused from the case; that this Court vacate the District Court's order dismissing the case; and that the Wilmington Department of Transportation be ordered to respond to the compliant.

The District Court dismissed Brown's complaint on June 30, 1999. Brown has appealed that decision and his appeal is currently pending in this Court. (SEE: C.A. No. 00-2124). "The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr* v. *United States Dist. Court*, 426 U.S. 394, 402 (1976). Additionally,

"mandamus is not substitute for appeal and a writ of mandamus will not be granted if relief can be obtained by way of our appellate jurisdiction." In re Chambers Development Company, Inc., 148 F.3d 214, 226 (3d Cir. 1998). Brown has made no showing (nor does it appear that he could) that the relief requested in his petition for mandamus cannot be pursued on his appeal. As noted, mandamus is not a substitute or alternative to the normal appellate process. Therefore, we will deny Brown's petition for a writ of mandamus.

UNREPORTED - NOT PRECEDENTIAL

APPENDIX M

UNITED STATES COURT OF APPEALS FOR THE THIRD COURT

No. 00-2124

ROBERT BROWN;
MICRO BUSINESS COMMUNITY* - - - - - - - *Appellant*

v.

CITY OF WILMINGTON; JIM SILLS, MAYOR;
DELDOT; CITY COUNCIL FOR THE CITY OF
WILMINGTON; CITY PLANNING DEPT;
MBNA BANK - *Defendants*

*Dismissed per Clerk's Order of 8/31/00

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00527)
District Judge: Honorable Roderick R. McKelvie

Submitted Under Third Circuit LAR 34.1(a)
August 1, 2001

BEFORE: NYGAARD, MCKEE and GREENBERG, circuit judges

(Filed August 2, 2001)

OPINION

PER CURIAM. Robert E. Brown appeals the district court's dismissal of a civil rights case he brought pursuant to 42 U.S.C. §§ 1983, 1985, and 2000a. We will affirm.

Brown's complaint named as defendants the City of Wilmington, its city council, planning department, and mayor; the Delaware Department of Transportation (DELDOT); and MBNA Bank.[1] Brown stated that the defendants had on July 8, 1993, repealed a city ordinance that provided for metered parking on several blocks in the downtown business district in order to provide for the expansion of MBNA Bank. He alleged that the defendants had taken this action covertly and had not provided the affected businesses and landowners with the notice required by DEL. CODE ANN. tit. 17, § 1302(b) and tit. 29, § 10115. He contended that the repeal was unlawful because no financial impact study was conducted pursuant to DEL. CODE ANN. tit. 29 § 1304(e). He argued that the defendants' actions deprived him of statutory rights provided by DEL. CODE ANN. tit. 17, §§ 1306, 1311, and 1313. Brown also complained that the defendants had on September 24, 1998, without giving affected parties the notice required by DEL. CODE ANN. tit. 17, § 1302 and tit. 29, §§ 10115, 10116, and 10122, enacted a new ordinance forbidding parking on several blocks of Walnut Street. Brown contended that the defendants' actions in 1993 and 1998 affected his income and deprived him of due process and equal protection as guaranteed by the federal and state constitutions. Brown subsequently amended his complaint to allege that the City, its mayor, and the city council had violated DEL. CODE ANN. tit. 22, §§ 304 and 305, pertaining to the establishment and alteration of regulations.

All of the defendants but DELDOT filed motions to dismiss. In a letter to Brown that was filed with the court, DELDOT indicated that it believed it had not been properly served because neither the Secretary of Transportation nor the Attorney General had received process from Brown.

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[1]Another plaintiff in the district court was Micro Business Community. That entity has been dismissed from this appeal.

The district court granted the motions to dismiss. It held that Brown had no viable 42 U.S.C. §§ 1983 and 1985 claims because he had no property right in the streets or parking meters of the downtown business district. The court indicated that DEL. CODE ANN. tit. 17, § 1304, was inapplicable because Brown had not alleged that any public road was vacated or abandoned. The court held that Brown had not stated a claim under 42 U.S.C. § 2000a because he had alleged no discrimination on the basis of race, color, religion, or national origin. As to DELDOT, the court held that Brown had failed to effect service because he had not delivered a copy of the complaint to its chief executive officer. Brown timely appealed.[2]

Brown first argues that the district judge should have recused himself sua sponte under 28 U.S.C. §§ 144 and 455 because he had presided, or was presiding, over another case involving MBNA and the firm representing MBNA. This argument is frivolous. Section 144 is inapplicable because Brown did not file an affidavit with the court stating the reasons that he believed the judge was biased. See *United States* v. *Martorano*, 866 F.2d 62, 67 n.5 (3d Cir. 1989). Under § 455, a judge must recuse if his impartiality might be questioned by a reasonable person. See *id.* at 68. A reasonable person would not question the district judge's participation merely because one of the parties, and its

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[2]The court dismissed DELDOT without prejudice. A dismissal without prejudice is typically not appealable as a final order under 28 U.S.C. § 1291. See *Bhatla* v. *U.S. Capital Corp.*, 990 F.2d 780, 786 (3d Cir. 1993). However, an order dismissing a complaint without prejudice is appealable if the plaintiff would be unable to cure the defect. *Borelli* v. *City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976). The time for Brown to effect service has now run. See Fed. R. Civ. P. 4(m). Furthermore, the district court's conclusion that Brown's complaint failed to state a claim would apply to DELDOT as well. We have recognized that a plaintiff may finalize a dismissal without prejudice by electing to stand on the dismissal complaint. See *Borelli*, 532 F.2d at 951-92. We understand Brown to be standing on the complaint. For these reasons, we are satisfied that appellate jurisdiction is proper.

attorney, had appeared before him in another case. See, e.g., *Christo* v. *Padgett*, 223 F.3d 1324, 1334 (11th Cir. 2000). Brown points to various rulings as proof that the judge should have recused, but a party's unhappiness with a judge's rulings in a case will not dictate recusal. See *Jones* v. *Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1356 (3d Cir. 1990).[3]

Brown contends that the district court erred in concluding that he had not effectively served DELDOT. Under Fed. R. Civ. P. 4(j), service upon a state or local government must be effected on the "chief executive officer" of the organization or by the manner prescribed by state law. State law also provides for service of the "chief executive officer" of the entity. See Del. R. Super. Ct. 4(f)(IV). Brown concedes that he did not serve DELDOT's chief executive officer. He contends that his service on the *city's* department of transportation should be sufficient to effect service on the state agency, but we cannot say that the district court erred in concluding otherwise.

Brown argues that the district court erred in holding that he failed to state a claim against the other defendants. A federal civil rights action must rest on the violation of some federal, not state, right. See, e.g., *Kulwicki* v. *Dawson*, 969 F.2d 1454, 1468 (3d Cir. 1992) (§ 1983); *Jennings* v. *Shuman*, 567 F.2d 1213, 1221 (3d Cir. 1977) (§ 1985). Accordingly, violations of the Delaware Code or the state constitution are not, in and of themselves, actionable via 42 U.S.C. §§ 1983 or 1985. Brown *did* allege that

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[3]Brown indicates that he learned of his grounds for recusal only after the district court ruled. At that time, he filed a mandamus petition that requested the recusal of the district judge. We denied the petition. There, Brown stressed that the district judge had once been a partner in a firm that worked as special counsel to Delaware's governor and attorney general. See App. Exh. D, 2-3. Absent a showing that the judge was somehow previously involved in the case, recusal is not mandated. See *United States* v. *DiPasquale*, 864 F.2d 271, 279 (3d Cir. 1988).

the defendants' actions deprived him of his federal rights to due process and equal protection. As the district court indicated, however, Brown cannot make out any due-process violation because he has no property or liberty interest in the public parking or parking meters that were removed. *Sample* v. *Diecks*, 885 F.2d 1099, 1113 (3d Cir. 1989); see also *De Pace* v. *Mayor and Council of Wilmington*, 72 A.2d 439, 440 (Del. 1950) (parking is a privilege and a municipality has the power to enact parking regulations). In addition, Brown has not made out any equal-protection violation because he has not alleged any invidious discrimination or, indeed, any classification scheme at all. See *Price* v. *Cohen*, 715 F.2d 87, 91 (3d Cir. 1983). Brown did not state a claim under § 1983 or § 1985.

Brown argued that a violation of 42 U.S.C. § 2000a had occurred. As the district court held, Brown did not allege any "discrimination or segregation on the ground of race, color, religion, or national origin." Therefore, he did not state a claim under that statute.

We do not understand the district court to have exercised supplemental jurisdiction, see 28 U.S.C. § 1367, over any state-law claims that Brown may have intended to bring. Accordingly, we make clear that the dismissal of any such claims in Brown's petition was without prejudice.

For the foregoing reasons, we will affirm the district court's judgment.

APPENDIX N

UNITED STATES COURT OF APPEALS FOR THE THIRD COURT

No. 00-2124

ROBERT BROWN;
MICRO BUSINESS COMMUNITY* - - - - - - - *Appellant*

v.

CITY OF WILMINGTON; JIM SILLS, MAYOR;
DELDOT; CITY COUNCIL FOR THE CITY OF
WILMINGTON; CITY PLANNING DEPT;
MBNA BANK - *Defendants*

*Dismissed per Clerk's Order of 8/31/00

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 99-cv-00527)

SUR PETITION FOR REHEARING

BEFORE: BECKER, Chief Judge, SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, MCKEE, RENDELL, BARRY, AMBRO, FUENTES, and GREENBERG, Circuit Judges[1]

The petition for rehearing filed the Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court and to all other available circuit judges in regular active service, and no judge who concurred in the decision having asked for

[1]Judge Greenberg's vote is limited to panel rehearing only.

rehearing, and a majority of the circuit judges in regular active service not having voted for rehearing by this court en banc, the Petition for Rehearing is hereby DENIED.

It is so ordered.

Costs taxed against Appellant. All of the above in accordance with the Opinion of the Court.

ATTEST:
s/ Marcia M. Waldron
Clerk

DATED: August 2, 2001

Supreme Court, U.S.
FILED
MAY 16 2002
CLERK

No. 01-1526

In the Supreme Court of the United States

ROBERT E. BROWN,
Petitioner,

v.

CITY OF WILMINGTON, MAYOR JIM SILLS, DELDOT, CITY COUNCIL, CITY PLANNING DEPT. AND MBNA BANK,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RESPONDENT CITY OF WILMINGTON, MAYOR JIM SILLS, CITY COUNCIL AND CITY PLANNING DEPARTMENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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14 pp

QUESTION PRESENTED

Whether the United States Court of Appeals for the Third Cireuit rendered a decision which conflicted with the Court's holding in Likey v. United States, 510 U.S. 540 (1994) and Bernofsky v. Tulane University, 962 F. Supp. 895 (E.D. LA. 1997) when it found no basis for recusal of the District Court judge presiding over Petitioner's case.

LIST OF PARTIES

PETITIONER	-	Robert E. Brown
RESPONDENTS	-	City of Wilmington, Mayor Jim Sills, DELDOT, City Council, City Planning Dept and MBNA Bank

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 1

REASONS FOR DENYING THE PETITION 3

I. PETITIONER HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT 3

A. THE DECISION OF THE UNITES STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DOES NOT CONFLICT WITH THIS COURT'S HOLDING IN LIKEY V. UNITED STATES, 510 U.S. 540 (1994) 3

B. BERNOFSKY V. TULANE UNIVERSITY, 962 F. SUPP. 895 (E.D. LA. 1997), CITED BY PETITIONER IN SUPPORT OF HIS WRIT OF CERTIORARI, DOES NOT APPLY TO PETITIONER'S CASE 6

CONCLUSION 7

TABLE OF AUTHORITIES

CASES

Bernofsky v. Tulane University,
962 F. Supp. 895 (E.D. LA. 1997) . . . . . i, 3, 6

Christo v. Padgett, 223 F.3d 1324 (11th Cir. 2000) 5

Jones v. Pittsburgh Nat'l Corp.,
899 F.2d 1350 (3d Cir. 1990) 4, 5

Likey v. United States, 510 U.S. 540 (1994) . . . i, 3, 4, 5

Sine v. Local No. 992 International
Brotherhood of Teamsters,
882 F.2d 913 (4th Cir. 1989) 5

Smith v. Danyo, 585 F.2d 83 (3d Cir. 1978) 5

United States v. DiPasquale,
864 F.2d 271 (3d Cir. 1988) 5

United States v. Martorano,
866 F.2d 62 (3d Cir. 1989) 4, 5

United States v. Rosenberg,
806 F.2d 1169 (3d Cir. 1986),
cert. denied 481 U.S. 1070 (1987) 5

STATUTES

28 U.S.C. §144 4

28 U.S.C. § 455 . . . . . 4, 5

29 Del. C. §10101 2

29 Del. C. §10115 2

29 Del. C. §10116 2

29 Del. C. §10117 2

29 Del. C. §10122 2

17 Del. C. §1302 2

RULES

Sup. Ct. R. 10. 3

OTHER AUTHORITIES

Chapter 37, Wilm. C. §37-95 1

STATEMENT OF THE CASE

The sole issue raised by Petitioner on certiorari centers on whether the United States Court of Appeals for the Third Circuit properly found no basis upon which the District Court judge who presided over Petitioner's case should have recused himself. Petitioner's basis for recusal was the fact that the District Court judge had, or was, presiding over a separate, unrelated matter captioned Spark v. MBNA, C.A. No. 96-497, wherein Respondent MBNA Bank was a party represented by the same attorneys of record as those in Petitioner's matter. Petitioner maintains that the decision rendered by the Court of Appeals on the issue of recusal conflicts with relevant decisions issued by this Court.

Petitioner fails to satisfy any of the criteria under Rule 10 of the Court's Rules of Practice warranting a grant of the Petition.

STATEMENT OF FACTS

On August 13, 1999, Petitioner Robert E. Brown filed a complaint in the United States District Court for the District of Delaware. The complaint was filed against the City of Wilmington, City Council of the City of Wilmington, Mayor James Sills, the City Planning Department, the Delaware Department of Transportation and MBNA Bank. (Pet'r App. pp. 3a-4a).

Petitioner alleged that on July 8, 1993, the City Respondents deleted Chapter 37, §37-95 of the Wilmington City Code, "Regulations of Parking Meters in Downtown", Ordinance No. 93-046. Petitioner further contended that the City Respondents concealed the introduction and passage of Ordinance No. 93-046 from the public. In support of his

position, Petitioner alleged that the City Respondents failed to give notice as required by Title 17, §1302 (b) of the Delaware Code. Petitioner further stated that on September 24, 1998, the City Respondents passed an ordinance instituting "No Parking, Standing or Stopping" on Walnut Street between 9th and 13th Streets located in the City of Wilmington in violation of Title 17, §1302 (a)(b), and Title 29, §§10101, 10115, 10116, 10117 and 10122 of the Delaware Code. (Pet'r App. pp. 4a-5a, 6a-7a).

The United States District Court for the District of Delaware, upon Respondents' motion, dismissed Petitioner's complaint on all grounds for failure to state a claim upon which relief could be granted. (Pet'r App. pp. 3a-7a). On July 5, 2001, Petitioner filed a Writ of Mandamus in the United States Court of Appeals for the Third Circuit, requesting for the first time the recusal of the Honorable Roderick R. McKelvie, the District Court judge who presided over his case. The Court of Appeals properly denied Petitioner's request for a Writ of Mandamus, stating that the relief requested in the petition for mandamus was an issue for the normal appellate process. On August 2, 2001, the Court affirmed the District Court's dismissal of the case and addressed the issue of recusal. On this point, the Court ultimately held that Petitioner's arguments were frivolous and recusal of the presiding judge was not warranted. (Pet'r App. pp. 35a-36a)

REASONS FOR DENYING THE PETITION

I. PETITIONER HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. The Rule further explains "the character of the reasons the Court considers" when reviewing a writ. Presumably, Petitioner posits that Rule 10(c) is applicable to this matter in that the decision of the Court of Appeals conflicts with the decisions of this Court in Likey v. United States, 510 U.S. 540 (1994) and Bernofsky v. Tulane University, 962 F. Supp. 895 (E.D. LA. 1997). Rule 10(c) states, in pertinent part, that the Court will consider a writ which has as its basis the argument that "a United States court of appeals... has decided an important federal question in a way that conflicts with relevant decisions of this Court." Petitioner fails to present any compelling reason meeting this standard and erroneously argues a conflict of authority as to the issue raised in the present writ.

A. The Decision of the United States Court of Appeals for the Third Circuit Does Not Conflict with this Court's Holding in Likey v. United States, 510 U.S. 540 (1994).

Petitioner argues that the District Court judge should have recused himself from the matter below captioned Robert Brown; Micro Business Community v. City of Wilmington; Jim Sills, Mayor; DELDOT; City Council for the City of Wlmington; City Planning Dept.; MBNA Bank, D.C. Civ. No. 99-cv-00527. As the basis for his position, Petitioner

states that the District Court judge had, or was, presiding over a separate, unrelated matter captioned Spark v. MBNA, C.A. No. 96-497, wherein Respondent MBNA Bank was a party represented by the same attorneys of record as those in Petitioner's matter. As such, this violates 28 U.S.C. §§ 144 and 455, and Canons 1 and 2 of Judicial Conduct. Although Petitioner cites Likey v. United States, 510 U.S. 540 (1994) as support for his position, the Court's holding in Likey actually contradicts Petitioner's arguments. In Likey, the petitioners argued that the trial judge was required to recuse himself pursuant to 28 U.S.C. § 455 because the judge had displayed "impatience, disregard for the defense and animosity" toward one of the petitioners in a previous trial. Id. at 542. Petitioner made a motion for recusal at the beginning of the trial and at the end of the prosecution's case. The judge denied both motions. The appellate court affirmed the decision.

In upholding the appellate court's decision, this Court in Likey held that the numerous grounds for recusal brought forth by Petitioners were inadequate. "They consist of judicial rulings, routine trial administration efforts, and ordinary admonishments... to witnesses. All occurred in the course of judicial proceedings, and neither (1) relied upon knowledge acquired outside such proceedings nor (2) displayed deep-seated and unequivocal antagonism that would render fair judgment impossible." Id. at 556.

In the present matter, Petitioner failed to comply with 28 U.S.C. § 144 because he did not file an affidavit with the District Court judge stating the reasons he believed the judge was biased. Jones v. Pittsburgh Nat'l Corp., 899 F.2d 1350 (3d Cir. 1990); United States v. Martorano, 866 F.2d 62, 67 n.5 (3d Cir. 1989). Furthermore, Petitioner does not allege that the District Court judge in granting Respondents' motion

to dismiss relied upon knowledge acquired outside judicial proceedings. Finally, Petitioner has failed to raise any facts which would indicate a "deep-seated and unequivocal antagonism" on the part of the District Court.

Consistent with the holding in Likey where this Court found no basis for recusal, the Court of Appeals held that Petitioner had not shown that the trial judge's impartiality would be questioned by a reasonable person as required by 28 U.S.C. § 455. (Citing Martorano, *supra*, at 68.) The Court further stated that a "reasonable person would not question the district judge's participation merely because one of the parties, and its attorney, had appeared before him in another case." (Pet'r App. pp. 35a-36a); see also, Sine v. Local No. 992 International Brotherhood of Teamsters, 882 F.2d 913 (4th Cir. 1989)(bias cannot be shown by a judge's decision in another case).

The Court of Appeal's holding in this matter is fully consistent with Likey and prevailing case law on the issue of recusal. See Christo v. Padgett, 223 F.3d 1324 (11th Cir. 2000); Jones v. Pittsburgh Nat'l Corp., 899 F.2d 1350 (3d Cir. 1990); United States v. DiPasquale, 864 F.2d 271 (3d Cir. 1988); United States v. Rosenberg, 806 F.2d 1169 (3d Cir. 1986), *cert. denied* 481 U.S. 1070 (1987); Smith v. Danyo, 585 F.2d 83 (3d Cir. 1978). As such, Petitioner has not demonstrated that the Court of Appeals rendered a decision upon an important question of federal law in a manner which conflicts with relevant decisions of this Court. Therefore, the Court should deny the Petition for a Writ of Certiorari in this matter.

B. Bernofsky v. Tulane University, 962 F. Supp. 895 (E.D. LA. 1997), Cited by Petitioner in Support of His Writ of Certiorari, Does Not Apply to Petitioner's Case.

Petitioner alleges that the decision of the Court of Appeals is also inconsistent with Bernofsky v. Tulane University, 962 F. Supp. 895 (E.D. LA. 1997). However, Bernofsky lends no support to Petitioner's contentions.

Bernofsky was not a matter decided by this Court, but rather a decision by the United States District Court for the Eastern District of Louisiana. Furthermore, the court in Bernofsky did not address the issue of recusal of the trial judge. Bernofsky dealt with substantive issues related to a motion for summary judgment in an employment discrimination case. This case has no relevance to Petitioner's argument and is not a basis for this Court to grant the petition at bar. Therefore, the Court should deny the Petition for a Writ of Certiorari in this matter.

CONCLUSION

Given the above, Petitioner has failed to identify a conflict of authority on an important federal question. As such, the Petition should be denied.

Respectfully Submitted,

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Supreme Court U.S.
FILED
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No. 01-1526

In the Supreme Court of the United States

ROBERT E. BROWN,

Petitioner,

v.

CITY OF WILMINGTON, JIM SILLS, MAYOR, DELDOT, CITY COUNCIL FOR THE CITY OF WILMINGTON, CITY PLANNING DEPT. AND MBNA BANK,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT MBNA BANK BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Petition raises the following issues[1]:

1. Did the United States Court of Appeals for the Third Circuit err in ruling that the District Court Judge should not have *sua sponte* recused himself pursuant to 28 U.S.C. §§ 144 and 455?

2. Did the Third Circuit err in affirming the District Court's grant of Respondents' Motions to Dismiss for failure to state a claim based upon any deprivation of Petitioner's constitutional rights?

[1] Petitioner Robert E. Brown does not list as a question for review to this Court the alleged constitutional deprivations which formed the substantive basis of Petitioner's Complaint in the United States District Court for the District of Delaware. However, he argues this issue in his Petition under the subheading, "Reasons for Granting the Writ" (See Petition at p. 7). Therefore, Respondent MBNA Bank ("MBNA") will address that issue.

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

In addition to the parties listed by Petitioner, there was a second Plaintiff in the original proceedings in United States District Court for the District of Delaware and on appeal to the United States Court of Appeals for the Third Circuit. The Third Circuit dismissed Micro Business Community for failure to timely prosecute. (Pet. App. at p. 8a).

Also, the District Court dismissed the complaint against Defendant DELDOT without prejudice for ineffective service of process. (Pet. App. at p. 7a). The Third Circuit affirmed the District Court's decision to dismiss DELDOT. (Pet. App. at pp. 36a-37a).

Respondent MBNA Bank ("MBNA"), whose proper name is MBNA America Bank, N.A., is a wholly-owned subsidiary of MBNA Corporation, a publicly traded company. Additionally, Alliance Capital Management L.P. ("Alliance") and certain affiliates of Alliance (together with their parent corporations AXA Financial, Inc., formerly known as the Equitable Companies Incorporated, AXA and certain AXA affiliates) hold 10% or more of the party's stock.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceeding and Statement Pursuant to Rule 29.6 ii

Table of Contents iii

Table of Cited Authorities iv

Statement of the Case 1

Reasons for Denying the Writ 3

I. Respondent Brown has not Articulated a Compelling Reason to Justify Discretionary Review by this Court 3

A. There is No Conflict of Authority Between Courts of Appeal on any Matter Raised by Petitioner 3

B. There is No Conflict of Authority Between Courts of Appeal Concerning Petitioner's Constitutional Claims 5

II. The Lower Courts did not Err in Denying Petitioner's Claims 5

Conclusion 7

TABLE OF CITED AUTHORITIES

Cases:

Bernofsky v. Tulane University Medical School, 962 F.Supp. 895 (E.D. La. 1997) 3, 4

Bumpus v. Uniroyal Tire Co. Division of Uniroyal, Inc., 385 F.Supp. 711 (E.D. Pa. 1974) 4

Christo v. Padgett, 223 F.3d 1324 (11th Cir. 2000) *cert. denied*, 531 U.S. 1191 (2001) 4

Hauptmann v. Wilentz, 555 F.Supp. 28 (D.N.J. 1982) . 4

Liteky v. United States, 510 U.S. 540 (1994) 3, 4

Sine v. Local No. 992 International Brotherhood of Teamsters, 882 F.2d 913 (4th Cir. 1989) 4

United States v. Martorano, 866 F.2d 62 (3d Cir. 1989) 4

Statutes:

28 U.S.C. § 144 . . . . . 2, 3

28 U.S.C. § 455 . . . . . 2, 4, 5

28 U.S.C. § 1343 1

42 U.S.C. § 1983 . . . . . 1, 5

42 U.S.C. § 1985 . . . . . 1, 5

42 U.S.C. § 2000a 1, 6

Rules:

Sup. Ct. R. 10 3

STATEMENT OF THE CASE

Petitioner Robert Brown brought an action against the City of Wilmington, City Council, Planning Department and Mayor (collectively the "City"), the Delaware Department of Transportation ("DELDOT") and MBNA in United States District Court for the District of Delaware. (Pet. App. at p. 3a). This action was brought pursuant to 28 U.S.C. §1343 and 42 U.S.C. §§ 1983, 1985 and 2000a. (Pet. App. at pp. 4a-5a). Petitioner alleged that Defendants, individually or collectively, had repealed a municipal ordinance on July 8, 1993, which resulted in the elimination of parking meters along certain streets in downtown Wilmington. Petitioner owns a business along one of the streets. Petitioner claimed that Respondent MBNA took part in efforts to repeal this ordinance in order to build its downtown headquarters. (Pet. App. at p. 4a). Petitioner alleged that this action violated his rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

Respondents MBNA and the City filed motions to dismiss, claiming *inter alia* that Petitioner had failed to state a claim upon which relief may be granted. Petitioner Brown moved for a default judgment against DELDOT. (Pet. App. at p. 4a).

The United States District Court for the District of Delaware granted Respondents MBNA and the City's Motions to Dismiss, finding that Petitioner had failed to state a claim under 42 U.S.C. §§ 1983 and 1985 because there was no constitutional deprivation occasioned by the removal of parking meters along public city streets. Moreover, Petitioner failed to state a claim under 42 U.S.C. § 2000a because he did not allege that he was denied access to public

accommodations on the basis of race, color, religion or national origin.[2] (Pet. App. at pp. 6a-7a).

The Court denied Petitioner's motion for default judgment against DELDOT, ruling that service of process was ineffective. (Pet. App. at pp. 5a-5b).

Petitioner appealed the District Court's decision to the Third Circuit Court of Appeals. In this appeal, Petitioner argued for the first time that the district judge should have recused himself *sua sponte* under 28 U.S.C. §§ 144 and 455. Petitioner claimed that the judge was biased because he was presiding over a separate case involving Respondent MBNA and its counsel, and that the judge had at one time acted as counsel for the Delaware Public Service Commission at the same time one of MBNA's counsel had served as Attorney General for the State of Delaware. (Pet. App. at p. 35a-36a). Petitioner also argued that the District Court had erred in its ruling with respect to his substantive claims.

The Third Circuit rejected both arguments. (Pet. App. at pp. 36a-37a). Petitioner moved for reargument. The Third Circuit denied this motion. (Pet. App. at pp. 38a-39a). Petitioner has filed a petition for writ of certiorari to this Court. This is Respondent MBNA's brief in opposition.

[2] Petitioner alleged violations of state law as well. The District Court rejected those claims.

REASONS FOR DENYING THE WRIT

I. RESPONDENT BROWN HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT

Certiorari review is a matter of judicial discretion, to be granted only for compelling reasons. Sup. Ct. R. 10. Although not exhaustive, Supreme Court Rule 10 lists the following pertinent reasons the Court typically considers: the United States Court of Appeals has decided a matter in conflict with the decision of another United States Court of Appeals on an important issue; or has so far departed from the proper procedure as to call for this Court to exercise supervisory authority.Petitioner has not demonstrated any compelling reason for this Court to exercise its discretion in this case.

A. There is No Conflict of Authority Between Courts of Appeal on any Matter Raised by Petitioner

Regarding the recusal issue, Petitioner alleges that the Third Circuit's opinion in this case conflicts with the United States Supreme Court's decision in *Liteky v. United States*, 510 U.S. 540 (1994) and the decision of *Bernofsky v. Tulane University Medical School*, 962 F.Supp. 895 (E.D. La. 1997). *Bernofsky* is a District Court decision. Regardless, neither decision conflicts with the Third Circuit's ruling in this case. As the Third Circuit observed, Petitioner's argument for recusal is "frivolous." (Pet. App. at p. 35a). Petitioner raised the allegation of judicial bias for the first time on appeal. He did not follow the requirement of 28 U.S.C. § 144 that an affidavit be filed with the District Court stating the reasons

why the judge was biased. (Pet. App. at p. 35a). Moreover, with respect to 28 U.S.C. § 455, a judge is required to recuse himself only when his impartiality might reasonably be questioned. *United States v. Martorano*, 866 F.2d 62, 67 n. 5 (3d Cir. 1989). The grounds cited by Petitioner do not meet that standard.

First, Petitioner claims that the judge who presided over his case simultaneously presided over another matter including Respondent MBNA and its counsel. The mere participation by a judge in two cases involving the same party does not, in and of itself, call the judge's impartiality into question. *See, e.g., Christo v. Padgett*, 223 F.3d 1324, 1334 (11th Cir. 2000), *cert. denied*, 531 U.S. 1191 (2001); *Sine v. Local No. 992 International Brotherhood of Teamsters*, 882 F.2d 913 (4th Cir. 1989).

The Third Circuit's ruling in this regard does not conflict with any decision cited by Petitioner. In *Liteky v. United States*, 510 U.S. 540 (1994), this Court clarified the meaning of the "extrajudicial source" doctrine and its application to § 455 cases. Nowhere does that opinion state a proposition contrary to the Third Circuit's reasoning in this case. The District Court's decision in *Bernofsky v. Tulane University Medical School*, 962 F.Supp. 895 (E.D. La. 1997) is simply inapposite to any recusal issue Petitioner has raised. Second, the district judge's former association with one of Respondent MBNA's counsel several years prior to the instant case, even if true, would not under the circumstances disqualify the judge from hearing this case. *See Bumpus v. Uniroyal Tire Co. Division of Uniroyal, Inc.*, 385 F. Supp. 711, 714 (E.D. Pa. 1974); *Hauptmann v. Wilentz*, 555 F.Supp. 28, 31 (D.N.J. 1982). Logically, no inference can be drawn from a judge's former representation of the Public Service Commission and the subsequent appearance before

that judge of the former Attorney General of the State of Delaware. This relationship does not implicate any of the specific statutory prohibitions set forth in 28 U.S.C. § 455(b). The Third Circuit did not specifically address this second argument for recusal, but the result would be the same as with the first. Petitioner has cited no conflicting authority warranting this Court's review on that issue.

B. There is No Conflict of Authority Between Courts of Appeal Concerning Petitioner's Constitutional Claims

The Third Circuit ruled there was no violation of Petitioner's federal rights to due process and equal protection. First, Petitioner Brown failed to state a claim for deprivation of due process because he had no liberty or property interest in either the parking meters or in public parking. (Pet. App. at p. 37a). Petitioner had not made out an equal protection claim because he did not allege invidious discrimination or any classification scheme. (Pet. App. at p. 37a).

This decision does not conflict with any other Circuits. Indeed, Petitioner has not cited any such conflict. Accordingly, there is no merit to Petitioner's request that this Court exercise discretion to grant a writ of certiorari on this ground.

II. THE LOWER COURTS DID NOT ERR IN DENYING PETITIONER'S CLAIMS

Both the District Court and the Third Circuit Court of Appeals correctly ruled that Petitioner suffered no constitutional deprivation as a result of the removal of parking meters on City streets. As mentioned above, in order to state a claim for relief under 42 U.S.C. §§ 1983 and 1985,

Petitioner must allege denial of a constitutional right. The streets and parking meters in the City are public property. Therefore, there is no claim that private property was taken for public use without just compensation under the Fifth and Fourteenth Amendments to the United States Constitution. (Pet. App. at pp. 6a, 37a). Moreover, Petitioner has no equal protection claim because he did not allege either invidious discrimination or any classification scheme. (Pet. App. at p. 37a). Nor was there a violation of 42 U.S.C. § 2000a, as Petitioner did not allege discrimination on the basis of race, color, religion or national origin in the denial of access to a public accommodation. (Pet. App. at pp. 7a, 37a).

With respect to Petitioner's claim of judicial bias raised for the first time on appeal, the Third Circuit correctly concluded that no actual nor reasonably apparent bias was shown. This claim is clearly without substantive merit. Moreover, given the procedural posture in which judicial bias was raised for the first time on appeal, the Third Circuit was correct in rejecting the claim.

CONCLUSION

The Petition should be denied because no compelling reasons exist for this Court to exercise its discretion.

Dated: May 17, 2002

Respectfully submitted,

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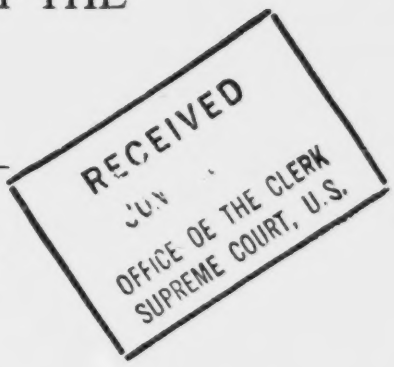
No. 01 - 1526

IN THE SUPREME COURT OF THE UNITED STATES



ROBERT E. BROWN – PETITONER

VS.

CITY OF WILMINGTON, JIM SILLS, MAYOR; DELDOT; CITY COUNCIL FOR THE CITY OF WILMINGTON; CITY PLANNING DEPT; MBNA BANK OF AMERICA – RESPONDENTS

PROOF OF SERVICE

PETITIONERS REPLY IN OPPOSITION

I, Robert E. Brown do swear or declare that on this date, May 26, 2002 as required by Supreme Court Rule 29 have served by hand delivery, and or mail postage prepaid on the parties herein after listed a copy of Petitioners Reply In Opposition.

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NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires July 18, 2004

CERTIFICATE OF SERVICE

I, John Gallagher, hereby certify that 40 copies of the foregoing Respondent's Brief in Opposition [01-1526] of *Brown v. City of Wilmington, et al.*, were sent via U.S. Next Day Express Mail to The U.S. Supreme Court, and 3 copies were sent regular first class mail, postage prepaid, to the following parties listed below this 10th day of May, 2002:

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Petitioner

All parties required to be served have been served.

I swear under penalty of perjury that the foregoing is true and correct. This Certificate is executed on May 16th, 2002.

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Sworn to and subscribed before me by said Affiant on the date designated below.

Date: 5-16-02

Notary Public

[seal] NOTARY PUBLIC STATE OF OHIO

PHILIP TUCKER
Notary Public, State of Ohio
My Commission Expires
December 19, 2006

CERTIFICATE OF SERVICE

I, John Gallagher, hereby certify that 40 copies of the foregoing Respondent's Brief in Opposition [01-1526] of *Brown v. City of Wilmington, et al.*, were sent via U.S. Next Day Express Mail to The U.S. Supreme Court, and 3 copies were sent regular first class mail, postage prepaid, to the following parties listed below this 10th day of May, 2002:

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All parties required to be served have been served.

I swear under penalty of perjury that the foregoing is true and correct. This Certificate is executed on May 10th, 2002.

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Sworn to and subscribed before me by said Affiant on the date designated below.

Date: 5-16-02

Notary Public

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